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and on behalf of all others similarly situated*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KELLY PINN, an individual, on her own
behalf and on behalf of all others similarly
situated,

Plaintiffs,

v.

CONSUMER CREDIT COUNSELING
FOUNDATION, INC., NATIONAL
BUDGET PLANNERS OF SOUTH
FLORIDA, INC., Florida corporations, and
ISHWINDER JUDGE, an individual, and
DOES 1-10, inclusive,

Defendants.

**DECLARATION OF ETHAN PRESTON
SUPPORTING PLAINTIFF KELLY
PINN'S MOTION FOR SANCTIONS
AGAINST DEFENDANTS**

No. 4:22-cv-04048-DMR

Judge Donna M. Ryu

1. My name is Ethan Preston. I am an attorney at law licensed to practice before all of the courts of the State of California. I am counsel of record for Plaintiff Kelly Pinn ("Pinn"), and have personal knowledge of all of the facts set forth in this declaration and could testify thereto if called to do so.

2. **Defendants' Discovery Responses:** On May 18, 2023, Defendants Consumer Credit Counseling Foundation, Inc. ("CCCF"), National Budget Planners of South Florida, Inc., and Ishwinder Judge (hereinafter jointly referred to as "Defendants") served their Second Amended Responses to Pinn's requests for production of documents ("RPDs"). Exhibit 2 to the Porus Engineer deposition is a true and correct copy of these responses. Defendant's counsel certified these responses under Rule 26(g). RPD 3 covers

all documents concerning communications between Defendants and Digital Media Solutions, LLC ["DMS"], any other telemarketer which called Plaintiff and/or [her telephone number] during the class period, and/or any telemarketer

1 using the name “Credit Associates.”
2 (Ex. 2 to Def.s’ Depo. at 3.) Defendants’ response to RPD 3 indicated they had “produced all
3 non-privileged documents in their possession, custody, or control that are responsive to this
4 Request,” and did not indicate Defendants had withheld any document (under any objection or
5 otherwise). (*Id.*)

6 3. Pinn’s RPD 17 covered “documents concerning any payment” CCCF made to
7 “any employee[,] affiliate, subsidiary, parent, or related corporation, [] or other entity related to
8 CCCF, including by way of example communications concerning [or] financial records
9 evidencing such payment.” (*Id.* at 6.) Defendants’ May 18, 2023 responses stated “Defendants
10 have conducted a diligent search and a reasonable inquiry and do not have any non-privileged
11 documents in their possession, custody, or control that are responsive to this Request.” (*Id.*)
12 California Secretary of State records indicate Faravahar, Inc. is a for-profit California
13 corporation, and Porus Engineer is its Chief Executive Officer, Chief Financial Officer, and
14 Director. Defendants have not produced any documents concerning Faravahar.

15 4. **Defendants’ July 2023 Production:** On July 13, 2023, Pinn alerted Defendants
16 that they had obtained various email headers from Microsoft Corporation (Defendants’ email
17 provider), which indicated Defendants’ document production was not complete. Pinn provided
18 Defendants with a set of 40 email headers reflecting emails sent between Defendants, DMS, and
19 Shiv Jauhar (shivjauhar@hotmail.com) which were responsive to Pinn’s RPD 3 but which
20 Defendants had not produced. Exhibit 7 to the Porus Engineer deposition is a true and correct
21 copy of this July 2023 email.

22 5. On July 20, 2023, Defendants made another production—including 176 emails
23 with DMS, 118 of which also included shivjauhar@hotmail.com.. Exhibit 11 to the Porus
24 Engineer deposition is a true and correct copy of an email chain between counsel from July 20 to
25 July 27, 2023. On July 27, 2023, Defendants confirmed (“for a third time”) by email that their
26 July 2023 production was “a complete production of all outstanding discovery[.]” (Ex. 11 to
27 Def.s’ Depo. at 1.)

28 6. Defendants’ July 2023 production included an email from DMS to Defendants, in

1 which Defendants requested access to a Google Sheets spreadsheet called “DMS Report” from
2 Defendants. A true and correct copy of this email is attached to this Declaration as Exhibit A.

3 7. **Defendants’ September 2023 Production:** On August 29, 2023, Pinn provided
4 Defendants with a collection of 58 Microsoft email headers reflecting emails sent between
5 Defendants, DMS, and Shiv Jauhar (shivjauhar@hotmail.com) which were responsive to Pinn’s
6 RPD 3 but which Defendants still had not produced. Exhibit 13 to the Porus Engineer deposition
7 is a true and correct copy of this August 2023 email. Exhibit 14 to the Porus Engineer deposition
8 is a true and correct chart of the email headers attached to this August 2023 email.

9 8. Defendants produced additional email in September 2023. Exhibit 15 to the Porus
10 Engineer deposition is a true and correct copy of this Defendants’ September 25, 2023 email.
11 The subject line of the September email is “Fw: Missing Emails.” The email itself states, in
12 relevant part: “Here are the additional emails.” Attached to the September 2023 email was a zip
13 file named “Missing Emails.zip” that contained 52 emails between Defendants and DMS that
14 Defendants had not previously produced.

15 9. Exhibit 18 to the Porus Engineer deposition is a true and correct copy of an email
16 included in Defendants’ September 2023 production. That email has a subject line “double
17 verified,” and is dated February 21, 2022. (Ex. 18 to Def.s’ Depo. at 1.) The email contains
18 embedded call data for a DMS telemarketing campaign for CCCF, and references “the google
19 spreadsheet” shared by DMS and CCCF. (*Id.*)

20 10. Exhibit 21 to the Porus Engineer deposition is a true and correct copy of an email
21 included in Defendants’ September 2023 production. That email has a subject line “May
22 Numbers,” and is dated June 2, 2022. (Ex. 21 to Def.s’ Depo. at 1.) The email contains a
23 spreadsheet named “May Prius_Buell.xlsx” reflecting call records from a DMS campaign for
24 CCCF. (*Id.* at 2-8.) The email also refers to “Liv [sic] Transfer,” “Downsells,” and “Double
25 Verified” calls. (*Id.* at 1.)

26 11. Defendants’ September 2023 production included two emails from Shiv Jauhar
27 (using the email address shivjauhar@hotmail.com) to Defendants, DMS, and others, dated
28 March 28 and June 14, 2022. True and correct copies of these emails are attached to this

1 Declaration as Exhibits B and C, except the full telephone numbers in Exhibit C have been
 2 redacted. In the March email, Jauhar asked DMS for “access to the recordings for the DV calls,”
 3 and provided an Indian telephone number. (Ex. B.) In the June email, Jauhar’s email embeds call
 4 data about Defendants’ telemarketing, and responds to prank calls. (Ex. C.)

5 12. **Defendants’ July 2024 Production:** On March 6, 2024, Pinn sent an email
 6 attaching the four headers from Pinn’s August 29, 2023 email that were *not* included in
 7 Defendants’ prior productions. The March 2024 email stated in relevant part: “There’s still 4
 8 emails missing from the original set of 58 missing emails.” On July 8, 2024, Defendants
 9 produced these remaining four emails with DMS.

10 13. On July 11, 2024, Defendants produced a document named “2024-07-11 DMS
 11 Call Records.xlsx”—which appears to just be a leads list that does not contain any call dates,
 12 outgoing numbers, etc.

13 14. A few hours before the deposition Defendants produced a set of JSON files
 14 purporting to be an original copy of Defendants’ Skype communications with other witnesses.
 15 During the deposition, Defendants asserted they had “produced the Skype files” as a Microsoft
 16 Word document “cut and paste” from Defendants’ Skype account. (Tr. 88:24-89:3.) In fact,
 17 Defendants had discussed but never actually produced this Word document to Pinn. During the
 18 deposition, Defendants promised to produce the .tar file native format output of Skype’s chat log
 19 export function, but have not done so. (*Id.* 87:1-13, 88:5-91: 19.)

20 15. **Outstanding shivjauhar@hotmail.com Emails:** All of the email Defendants’
 21 production includes DMS—most of which also involves shivjauhar@hotmail.com (118 of 176
 22 emails in Defendants’ July 2023 production, and 56 of 56 emails in Defendants’ September 2023
 23 and July 2024 production). Generally, Defendants productions indicate the user of the
 24 shivjauhar@hotmail.com email address played a direct role in managing Defendants’
 25 telemarketing campaigns.

26 16. Pinn has identified 82 email headers which she obtained from Microsoft which
 27 correspond to emails between Defendants and shivjauhar@hotmail.com that Defendants have not
 28 produced. A true and correct copy of Microsoft’s certificate of authenticity for the email headers,

1 together with a chart showing these missing emails, is attached to this Declaration as Exhibit D.

2 17. **Defendants' Organization Charts:** Exhibit 31 to the Porus Engineer deposition
3 is a true and correct copy of organization charts Defendants produced in discovery. Defendants
4 testified these charts are a "complete list of all CCCF's employees." (Tr. 96:8-10.) However, the
5 charts do not include Defendants' part-time accounting, regulatory, or IT employees. (*Id.* 76:1-4,
6 97:2-21.)

7 18. **Notice of Defendants' Deposition:** By prior agreement, Pinn served Defendants
8 with an amended notice of Rule 30(b)(6) deposition for the Defendants' July 16, 2024
9 deposition. The notice of deposition stated, in relevant part, Pinn's designation for the Rule
10 30(b)(6) deposition for the Court's May 29, 2024 order:

- 11 1. The foundation for the deponents' testimony at their deposition, including
12 their personal knowledge, and the basis for (including accuracy and
13 reliability of) their personal knowledge, and the basis for the CCCF
14 Defendants' designations of the deponents as their respective
15 representatives.
- 16 2. All information covered by the Court's May 29, 2024 order: "Plaintiff is
17 granted leave to take a Federal Rule of Civil Procedure 30(b)(6)
18 deposition of the CCCF Defendants regarding their document and
19 information systems, their search for and production of responsive
20 documents and information in discovery, and whether spoliation of
21 evidence has occurred. Plaintiff may explore the deficiencies in the court-
22 ordered declarations and the gaps in production described above to create
23 a record regarding the CCCF Defendants' conduct in discovery and
24 compliance with the court's previous orders on discovery." (ECF No. 114
25 at 3.)

26 **Certification**

27 19. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of
28 the United States of America that the foregoing is true and correct.

Dated: August 7, 2024

By: s/Ethan Preston
Ethan Preston